IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.452 OF 2005.

AND

CRIMINAL REVISION APPLICATION NO.453 OF 2005.

M/s.Vinay Container Services Pvt. Ltd. & others. ...Applicants.

Vs.

Nasir Khan and others. ...Respondents.

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Mr.A.D.Mundergi with P.R.Arjunwadkar, for Applicants.

Mr.D.R.More, A.P.P. for Respondent no.2-State.

**CORAM: R.S.Mohite, J.**

**DATED: 16th February, 2006**

**P.C.**:-

1. In both the Revision applications same contentions are raised, and therefore, both the revision applications are disposed of by a common order.

2. In Revision application no.452 of 2005 the impugned judgment order is passed by the Sessions Judge, Raigad, Alibag, partly allowing the appeal and upholding the conviction of the applicant in Criminal case 386 of 2000 for the offences under Section 138 of the Negotiable Instrument Act. It appears from the Appellate Court's judgment that the appeal Court has taken lenient view and has granted benefit of the Probation of Offenders Act to the applicant no.2 Vilas J. Khaire and directed him to pay compensation of Rs.2,00,000/- (Rupees Two lakhs only). In the Revision application no.453 of 2005, in respect of another cheque, the Sessions Judge, Raigad, Alibag has passed similar order and directed the applicant no.2 Vilas J. Khaire to pay compensation in the sum of Rs.1,60,000/-. I have perused the orders passed by the Appellate Courts below in both the aforesaid cases and I find that good reasons have been given for convicting the applicant. It was sought to be argued that the defence had rebutted the presumption under the Negotiable Instrument Act in respect of two cheques which were the subject matter of the Court proceedings. The defence version was that the blank cheques used to be given through their transporter and the transporter used to deposit those cheques to the complainants who were the Vendors of diesel and other oil products. That transporter used to collect the bills and at the end of the month and on totaling the bills, the blank cheques which were given by way of security could be filled in by the complainant and were

passed for payment. In this connection, it is admitted position that no transporter has been examined by the accused to indicate that such blank cheques have been handed over to any such transporter and that such transporter had handed over the blank cheques to the complainant. Similarly, the accounts at the end of the accused have also not been produced in the Court to indicate that diesel and other oil products were not received by the accused or that during the concerned period they were obtained from some other suppliers. In the circumstance, it cannot be said that there were sufficient rebuttal to the presumption of consideration for issuance of cheques. My attention was drawn to certain admissions given by the complainant during his cross-examination to the effect that the accounts books at his end were not available. This cannot be made a ground for rebuttal of presumption as the burden for rebuttal is on the accused. I have also noted that lenient view has been taken by the Lower Appellate Court. In the circumstance therefore, there is no case for interference. Hence, both these Revision applications are rejected.

(R.S.Mohite, J.)

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